UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JEFF DODD	)	
	)	
Plaintiff,	)	
	)	Case No. 4:15-cv-01744-JCH
v.	)	
	)	
DELTA OUTSOURCE GROUP, INC	)	
	)	
Defendant.	)	

PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff Jeff Dodd ("Dodd" or "Plaintiff") files this Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment, and respectfully requests that the Court enter partial summary judgment in his favor and against Defendant.

I. INTRODUCTION

Plaintiff brings this cause of action for violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692, et seq., arising out of an illicit third party disclosure of debt by Defendant Delta Outsource Group, Inc., ("DOG" or "Defendant"), and arising out of two telephone calls Defendant made to Plaintiff in which Defendant failed to disclose that it was a debt collector. Plaintiff moves this Court to grant partial summary judgment as to the non-FDCPA compliant telephone calls. As to the telephone calls, Defendant failed to disclose that it was a debt collector attempting to collect a debt, in violation of 15 U.S.C. § 1692e(11) which requires that in every debt collection communication, the debt collector must disclose that it is a debt collector.

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II. LEGAL STANDARD

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Libel v. Adventure Lands of Am., Inc.*, 482 F.3d 1028, 1033 (8th Cir. 2007). Summary judgment is an integral part of the federal rules designed to "secure the just, speedy and inexpensive determination of every action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

A moving party is entitled to summary judgment if the evidence, viewed in the light most favorable to the non-moving party, shows that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Allianz Ins. Co. of Can. v. Sanftleben*, 454 F.3d 853, 855 (8th Cir. 2006). "Mere allegations, unsupported by specific facts or evidence beyond the nonmoving party's own conclusions, are insufficient to withstand a motion for summary judgment." *Thomas v. Corwin*, 483 F.3d 516, 527 (8th Cir. 2007). If the non-moving party fails "to make a sufficient showing on every essential element of its case on which it bears the burden of proof," the court should resolve the dispute on summary judgment. *Osborn v. E.F. Hutton & Co., Inc.*, 853 F.2d 616, 618 (8th Cir. 1988) (*quoting Celotex Corp.*, 477 U.S. at 322-23).

III. PERTINENT FACTS

On October 2, 2015, Defendant called Plaintiff at his work and attempted a debt collection communication. (See Statement of Uncontroverted Material Facts ("SUMF") ¶ 1.) During the October 2, 2015 debt collection phone call, Defendant failed to disclose that it was a debt collector. ("SUMF") ¶ 2.) On October 7, 2015, Defendant again called Plaintiff and attempted a debt collection communication. (See Statement of Uncontroverted Material Facts

("SUMF") ¶ 3.) During the October 7, 2015 debt collection phone call, Defendant failed to disclose that it was a debt collector. ("SUMF") ¶ 4.)

IV. ARGUMENT

Defendant violated the FDCPA provision requiring a debt collector to disclose that it is a debt collector in all debt collection communications. The FDCPA is a strict liability statute that does not require a showing of intent to deceive or knowledge of falsity. *See Peters v. General Service Bureau, Inc.*, 277 F.3d 1051, 1054-55, (8th Cir. 2002); *See also Turner v. JVDB & Associates, Inc.*, 330 F.3d 991, 995 (7th Cir. 2003) *citing Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 (2nd Cir. 1996) ("because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages"). FDCPA, 15 U.S.C. § 1692e(11) requires that in all communications subsequent to the initial communication, the debt collector must disclose that the communication is from a debt collector. FDCPA, 15 U.S.C. § 1692a(2) defines a "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium. A communication in connection with the collection of any debt exists when "an animating purpose of the communication … is to induce payment by the debtor." *McIvor v. Credit Control Services, Inc.*, 773 F.3d 909, 914 (8th Cir. 2014).

When a debt collector calls a debtor in connection with the collection of any debt, the debt collector must identify itself as a debt collector. *See Hosseinzadeh v. M.R.S. Assocs.*, 387 F. Supp. 2d 1104, 1115-16 (C.D. Cal. 2005) (voice messages); *Foti v. NCO Fin. Sys.*, 424 F.Supp.2d, 643, 654-60 (S.D. N.Y. 2006) (telephone calls). Failure to do so constitutes a violation of FDCPA, 15 U.S.C. § 1692e(11). *Hosseinzadeh*, 387 F.Supp.2d at 1116.

Here, the Defendant engaged in the same prohibited conduct found to violate FDCPA 15 U.S.C. § 1692e(11) in *Hosseinzadeh* and *Foti*. Just like *Hosseinzadeh* and *Foti*, where a debt collector conducted telephone debt collection communications that failed to identify the caller as a debt collector, here, the Defendant called Plaintiff and did not disclose that Defendant was a debt collector. Thus, Defendant's failure to disclose that it is a debt collector in its debt collection communications with Plaintiff violated FDCPA 15 U.S.C. § 1692e(11).

Because the uncontroverted facts demonstrate that Defendant did not identify itself as a debt collector in its debt collection phone calls with Plaintiff, Defendant, as a matter of law, violated the FDCPA 15 U.S.C. § 1692e(11) prohibition against conducting debt collection communications without disclosure that it is from a debt collector.

V. CONCLUSION

For the reasons set forth above, Plaintiff requests that partial summary judgment as to the FDCPA 15 U.S.C. § 1692e(11) claim on the telephone calls be entered in his favor, and against the Defendant Delta Outsource Group, and that the Court grant such other and further relief as it deems proper.

DATED this 20th day of July, 2016.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The below signature certifies that on July 20th, 2016, the foregoing document was filed electronically with the United States District Court for the Eastern District of Missouri, with notice of case activity generated and sent electronically to the following counsel of record:

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